



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

March 23, 2009

Resident  
1722 Mount Olive Road  
Knoxville, TN 37920

Subject: EPA Smokey Mountain Smelter Site Groundwater Assessment  
1722 Mount Olive Road  
Knoxville, TN 37920

Dear Resident:

The United States Environmental Protection Agency (EPA) is expanding its investigation of the former Smokey Mountain Smelter Site in Knoxville, Knox County, Tennessee. This expanded investigation includes determining whether groundwater contamination exists in drinking water wells of the surrounding area. The Tennessee Department of Environment and Conservation (TDEC) has informed EPA that a drinking water well may exist at your property, address listed in the subject line, and that this well occurs within a 0.5-mile radius of the Smokey Mountain Smelter Site.

Enclosed with this letter is an Access Authorization form; **EPA requests that you read and sign this form<sup>1</sup>, then mail it back to our office using the enclosed envelope as soon as possible.** The purpose of this form is to grant EPA personnel your permission to enter your property to collect a sample from your drinking water well. If your well head is locked or located inside a structure such as a shed or your home, please indicate this on the form and we will contact you to make an appointment. Also, if you would like to be present for the sampling event, you may also indicate this on the form and we will make every attempt to accommodate your schedule.

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<sup>1</sup>Pursuant to section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Public Law 99-499), EPA has the express authority to acquire access to property affected by hazardous substances and to conduct the above described activities. Placing conditions on EPA's broad access authority granted to it by Congress, weakens or diminishes EPA's legal rights and its ability to respond to environmental and human health hazards posed by contamination, and such actions are strongly opposed by the Agency and the U.S. Department of Justice (U.S. DOJ).

An Access Authorization is not, nor is it meant to be, an enforceable contractual document to be used unilaterally by EPA or a private party. In fact, when a landowner fails to give consent to EPA, the Agency can decide to issue an administrative order for access, it can seek the assistance of U.S. DOJ to obtain a warrant for access or a judicial access order in Federal District Court, or



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it can seek access by any other lawful means. EPA or U.S. DOJ does not act to enforce the Access Authorization.

As the current owner of property near the Beckmann Durham Sandefur Site, you have the full authority to grant or deny permission for all matters set forth herein, which includes the right to revoke, at any time, for any reason, such consent to access without threats or promises of any kind by the EPA. Hence, as the landowner or tenant, you could withdraw your consent, for example, if EPA's actions exceed the terms or sampling activities identified in the Access Authorization. Consistent with CERCLA, an Access Authorization simply documents the site activities and terms which the property owner or operator authorizes EPA and its representatives to conduct or implement over a specified period of time.

Moreover, in the event that your property is damaged in some way, Congress provides an exclusive legal remedy for persons with claims against the United States and its Agencies through the Federal Tort Claims Act, 28 U.S.C. § 1346. Pursuant to that statute, EPA codified the Federal Tort Claims Act regulations at 40 C.F.R. Part 10, which provides the process and framework for making and collecting on claims against the Agency. Such regulations provide that EPA can settle certain claims without the consent of U.S. DOJ, while other claims need the prior consent and approval of U.S. DOJ.

This section meant to address some questions you may have regarding the differences between EPA's Access Authorization and an access agreement or easement between you and parties other than EPA. Since no one in EPA, Region 4 has the authority to bind the Federal government to a potential commitment that may involve the payment of unappropriated funds to resolve legal claims for personal or property injuries, EPA's Access Authorizations are not contracts signed by EPA, nor do they contain indemnification, hold harmless or assumption of liability terms.

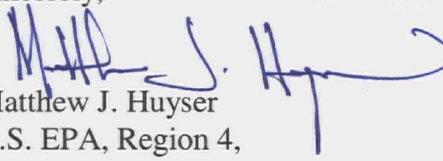
Seeing that the Agency does not have the authority to place conditions on its access authority by contracting to do certain activities with the United States' money; that an Access Authorization is binding on no one because it is revokable at will; and that you have the Federal Tort Claims Act or the Tucker Act, in the takings context, to pursue certain legal claims against EPA or the United States, the Agency believes that your interests are protected.

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Sampling should begin by the month of April, 2009, and be completed throughout the neighborhood before the end of May. A six month window of operation has been established on the Access Authorization form to provide time for resampling in the event that any of the data are unusable or any samples are damaged. Analytical results for you individual well will be provided to you upon request when they are available.

If you have any questions, please do not hesitate to email me at [huyser.matthew@epa.gov](mailto:huyser.matthew@epa.gov) or call me at (404) 562-8934.

Sincerely,

  
Matthew J. Huyser  
U.S. EPA, Region 4,  
On Scene Coordinator

Enclosures (2)

**\*\*\*PLEASE SIGN AND RETURN THIS COPY IMMEDIATELY\*\*\***

**ACCESS AUTHORIZATION**

**THIS ACCESS AUTHORIZATION** (the Authorization) is made as of this \_\_\_\_\_(day)  
of \_\_\_\_\_(month) 2009, and is by \_\_\_\_\_(Owner/Tenant),  
for the address of \_\_\_\_\_(Property).

**WITNESSETH:**

Owner/Tenant consents as follows:

1. Owner/Tenant grants authorization to the United States Environmental Protection Agency (EPA), its officers, employees, contractors and other authorized representatives for limited access to enter the Property identified above. Such access is for the limited purpose of conducting groundwater sampling work on the Property.

EPA's activities at the Property will include the following:

- a. Collect groundwater samples;
  - b. Inspect, sketch, photograph, and/or videotape work being conducted on the Property;
  - c. Transport equipment onto and about the Property as necessary to accomplish the above noted activities; and,
  - d. Access and enter structures and/or move any object that may obstruct access to accomplish the above noted activities.
2. Owner/Tenant understands that EPA and its authorized representatives who will be conducting the sampling work on the Property will not access portions of the Property that are not subject to this Access Authorization.
  3. Owner/Tenant understands that all sampling work on the Property will fully comply with all applicable federal, state, and local laws, rules and regulations, and that Owner/Tenant is not responsible for obtaining or paying for any applicable permits related to the activities to be conducted on the Property.

- 4 Owner/Tenant understands that EPA and its authorized representatives will attempt to leave the Property in a condition that will be agreed upon prior to the commencement of EPA's sampling activities.
- 5 The contact person for the undersigned and the EPA as to all notices and requests required pursuant to this Access Authorization shall be:

Owner/Tenant:

Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

EPA:

Matthew J. Huyser  
U.S. EPA Region 4  
61 Forsyth Street S.W.  
Atlanta, GA 30303-8960  
(404) 562-8934  
(404) 562-8699

6. Owner/Tenant denies any responsibility or liability for the presence of any soil, sediment, or ground or surface water impacts existing on the Property or for any release of such materials during the performance of the sampling work under this Access Authorization. Nothing in this Access Authorization shall be construed as an admission by Owner/Tenant of any responsibility or liability concerning any such impacts to the Property. Owner/Tenant reserves any and all rights, claims, and defenses that it may have with respect to the sampling work conducted on the Property.
7. The consent for access and use granted herein will commence on March 30, 2009, and will continue until September 30, 2009. If the access and use granted herein is to extend beyond September 30, 2009, EPA shall provide an additional written Access Authorization to Owner/Tenant.
8. Owner/Tenant understands that this Access Authorization does not restrict or prohibit Owner/Tenant's right to sell or lease the Property.
9. Owner/Tenant understands that the sampling activities conducted by EPA are undertaken pursuant to EPA's response and enforcement responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act (Superfund), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Public Law 99-499).

10. The features of this property include (please check all that apply):

- ☐ This property is not a residence (commercial or other use)
- ☐ There is no groundwater well at this property
- ☐ The groundwater well at this property is damaged
- ☐ Water for drinking/washing/rinsing is supplied to this property via a municipal water connection (a water bill is received)
- ☐ Groundwater supplied at this property is not used for drinking, washing, or rinsing (irrigation or other outdoor uses may apply)
- ☐ The groundwater well head is located in a locked structure (shed or cover)
- ☐ The groundwater well head is located inside or underneath the residence

IN WITNESS WHEREOF, Owner/Tenant has executed this Authorization as of the date set forth above:

By: \_\_\_\_\_  
(Owner/Tenant)

\_\_\_\_\_  
(Print name)